



THE CLEARING HOUSE
Advancing Payment Solutions Worldwide

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April 5, 2004

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the
Federal Reserve System
20th & Constitution Avenue, N.W.
Washington, D.C. 20551

Attention: Docket Nos. R-1156, R-1162

Public Information Room
Office of the Comptroller of the Currency
Mailstop 1-5
250 E Street, S.W.
Washington, D.C. 20219

Attention: Docket Nos. 03-21, 03-22

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Attention: Comments/OES

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552

Attention: Nos. 2003-47, 2003-48

Re: Interim Capital Treatment of Consolidated Asset-Backed
Commercial Paper ("ABCP") Program Assets and
Notice of Proposed Rulemaking Regarding ABCP Programs
and Early Amortization Provisions

Ladies and Gentlemen:

The New York Clearing House Association L.L.C. ("The Clearing House"), an association of major commercial banks,¹ submitted a comment letter dated November 17, 2003 concerning the Agencies' interim final rule (the "Interim Final Rule") and notice of proposed rulemaking (the "NPR") on the above-captioned subject.

¹ The members of The Clearing House are Bank of America, National Association, The Bank of New York, Bank One, National Association, Citibank, N.A., Deutsche Bank Trust Company Americas, Fleet National Bank, HSBC Bank USA, JPMorgan Chase Bank, LaSalle Bank National Association, U.S. Bank National Association, Wachovia Bank, National Association, and Wells Fargo Bank, National Association.

We understand, from conversations that certain representatives of our members and others within the industry have had with the Agencies over the past few weeks, that the Agencies are particularly concerned with the comment that we and others made urging the Agencies not to prohibit banking organizations subject to the market risk capital rules from applying those rules to liquidity facilities held in the trading book.² We are submitting this supplemental letter because we are concerned that a misunderstanding by the Agencies as to the scope of liquidity facilities that would be subject to the market risk capital rules if the Agencies permitted continued application of those rules to a limited category of facilities has become an obstacle to making the Interim Final Rule permanent.

Although some ABCP conduit programs have been restructured in a manner that satisfies the sponsor and its accountants that the ABCP issuer's assets need not be consolidated with the sponsor under FIN 46R, many programs have not. We understand that approximately 50% of the U.S. banking organizations that sponsor ABCP conduit programs have not restructured their programs and, consequently, are including the ABCP issuer's assets in the banking organization's consolidated balance sheet. Banking organizations that have chosen not to restructure have done so taking into account a variety of considerations, including the effort and expense involved in effecting a satisfactory restructuring, the uncertainty as to whether the accounting rules and related interpretations will change further, and the expectation that the Interim Final Rule will be made permanent.

The substance of the view expressed in Part II.B of our November letter was that existing standards for what is or is not in the trading book (and consequently subject to the market risk capital rules) should be preserved. We did not take the view that all liquidity facilities should be treated as part of the trading book. The distinction made in our November 2003 letter between "plain vanilla" ABCP program liquidity facilities that would be included in the banking book for risk-based capital purposes, as opposed to those that would be evaluated under the market risk capital rules, is their accounting treatment. Every off-balance sheet ABCP program liquidity facility within the scope of the Agencies' proposal would be included in the banking book. Conversely, liquidity facilities within the scope of the proposal that are accounted for as "trading" derivative financial instruments under SFAS No. 133 and SFAS No. 149 (and, consequently are marked-to-market and on-balance sheet, imposing an effective regulatory capital charge if the fair market value declines) would be evaluated under the market risk capital rules. We expect that a substantial majority by notional or principal amount of ABCP program liquidity facilities falls in the banking book category, and believe that holding full credit risk capital against highly structured on-balance sheet facilities that are accounted for as derivatives would not be reflective of the nature and extent of the risk present.

² In Part I of the NPR, the Agencies specifically requested comment on that prohibition and its implications.

In order to address the Agencies' concern, we respectfully request the Agencies to proceed as follows: make the Interim Final Rule permanent, with the caveat that banking organizations subject to the market risk capital rules not be permitted to apply those rules to liquidity facilities held in the trading book *unless the banking organization's primary banking regulator, after consideration of a formal request regarding a particular liquidity facility or structure held in the organization's trading book for U.S. GAAP purposes, consents to the application of the market risk capital rules for that particular facility or structure.* We believe that the circumstances under which a banking organization is likely to make this request are sufficiently limited that it will not be unduly burdensome to banking organizations to make the requests or for the Agencies to consider them. Essentially the requesting banking organizations would have the burden of demonstrating that the presumption that liquidity facilities should be evaluated for risk-based capital purposes as part of the banking book may be overcome in certain specific circumstances.

In conclusion, it is very important to our members that the Agencies permanently adopt the regulatory capital relief afforded under the Interim Final Rule. Failure to do so because of a misperception that capital requirements imposed on liquidity facilities will be materially undercut if some limited category of liquidity facilities were to be subject to the market risk capital rules would be extremely harmful to the industry and would result in the imposition of a regulatory capital charge absent a change in risk.

Thank you for considering the supplemental views expressed in this letter. If you have any questions, please contact Norman R. Nelson, General Counsel of The Clearing House, at 212-612-9205.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "J. Johnson", with a stylized flourish at the end.

cc: Norah Barger
Deputy Associate Director
Board of Governors of the Federal Reserve System

Jennifer J. Johnson, Federal Reserve System
Robert E. Feldman, Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency
Office of Thrift Supervision

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George French
Deputy Director
Division of Supervision and Consumer Protection
Federal Deposit Insurance Corporation

Tommy Snow
Director, Capital Policy
Office of the Comptroller of the Currency

John C. Price
Director, Supervision Policy
Office of Thrift Supervision